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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,616	10/08/2003	Elizabeth M. Andrews	8179-90549	7277

24628 7590 11/08/2004

WELSH & KATZ, LTD  
120 S RIVERSIDE PLAZA  
22ND FLOOR  
CHICAGO, IL 60606

EXAMINER

HOEY, ALISSA L

ART UNIT PAPER NUMBER

3765

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/681,616	<b>Applicant(s)</b> ANDREWS, ELIZABETH M.	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaspar et al. (US 4,728,538) in view of Ruth (US 2,424,056).

In regard to claims 1-7, Kaspar et al. provides a sock article particularly adapted for use in exercises with or without a mat and the exercise is capable of being yoga, pilates or stretching (column 1, lines 17-23). It is inherent that the sock of Kaspar et al. is made out of a natural, plastic or synthetic material. The sock having a layer of rubbery substance on the bottom or sole of the sock which has a sticky or friction characteristics to enable the sock to grip a floor or mat when used by an exerciser (column 1, lines 17-23). The rubbery substance is made out of a latex rubber, silicone rubber, polyurethane or polyisoprene rubber (column 4, lines 9-20).

However, Kaspar et al. fails to teach the sock having an open front end with webbings extending across the open front end from a top of the sock to a bottom sole of the sock to provide openings through which the toes of a user can extend. The toes are exposed out of the webbings for additional gripping functions on a floor or mat surface. Further, Kaspar et al. fails to teach the sock

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having four spaced part webbings extending across the open front end between the top of the sock to the bottom of the sole of the sock to provide five specific hole openings in the front end of the sock for receiving the toes of a wearer.

Finally, Kaspar et al. fails to teach the rubbery substance being a closed cell PVC vinyl material or a vinyl sponge foam material and the thickness of the rubbery substance being between .065 and .025 inches or .125 inches.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the rubbery substance being a closed cell PVC or vinyl sponge foam material because Applicant has not disclosed that the rubbery substance being a closed cell PVC or vinyl sponge foam material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the rubbery substance being a closed cell PVC, vinyl sponge foam material, a latex rubber, silicone rubber, polyurethane or a polyisoprene rubber because as long as the rubbery substance provides frictional grip between the floor and/or mat and the user's sock the rubbery substance can be any appropriate rubbery substance. Therefore, it would have been an obvious matter of design choice to modify Kaspar to obtain the invention as specified in claims 2 and 3.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the thickness of the rubbery substance being between .065 and .25 inches or .125 inches because Applicant has not disclosed that the rubbery substance being

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between .065 and .25 inches or .125 inches provides an advantage, is used for a particular purpose or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the rubbery substance being between .065 and .25. .125 inches or any other thickness as desired because as long as the rubbery substance provides gripping properties the thickness of the rubbery substance can be any.

Therefore, it would have been an obvious matter of design choice to modify Kaspar to obtain the invention as specified in claims 4 and 5.

Ruth provides a hosiery article (12) having an open front end (13) with webbings (15) extending across the open front end from a top of the sock to a bottom or sole of the sock to provide openings through which the toes of a user can extend (figures 1 and 3). The toes are exposed out of the webbings and are capable of providing additional gripping functions on a floor and/or mat surface. Further, Ruth teaches the hosiery article having four spaced apart webbings (15) extending across the open front end (13) between the top of the sock to the bottom of the sole of the sock to provide five specific hole openings (14) in the front end of the sock for receiving the toes of a wearer (figure 1).

It would have been obvious to have provided the sock with non-slip compositions of Kaspar with the toeless hosiery of Ruth, since the sock of Kaspar having a toeless end portion exposing the wearer's toe would allow the article to fit a wide range of foot sizes and will be less likely to develop holes in the foot portions due to the elimination of the toe regions which are subject to the greatest wear.

***Conclusion***

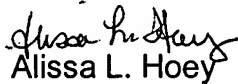
3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bosworth, Hearn, Wolfe, Payne, Hamilton, Luchs, Thorneburg, Curtis, Petrey, Baehr, Pugliatti, Tumas, Ogden, Jennings, Corry, Chiaruttini, Islar, Richardson, Boersema and English are all cited to show closely related sock articles.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (703) 308-6094. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alissa L. Hoey  
Patent Examiner  
Technology Center 3700